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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: **Ex Parte *Presentation***
CC Docket No. 94-54
CC Docket No. 99-68

Dear Ms. Salas:

On December 29, 2000, the Cellular Telecommunications & Internet Association ("CTIA") represented hand delivered a letter to Chairman Kennard regarding the Commission's recent efforts to phase-out its existing reciprocal compensation mechanisms and move to a bill and keep compensation system. CTIA's position is outlined in the attached letter.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Dustun L. Ashton

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List ABCDE

CTIA
Cellular Telecommunications Industry Association

Michael F. Altschul
Vice President, General Counsel

HAND DELIVERED

December 29, 2000

Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Chairman:

On December 12, 2000, CTIA wrote to you to discuss the Commission's recent efforts to phase-out its existing reciprocal compensation mechanisms and move to a bill and keep compensation system. Recent discussions indicate that the Commission may be intent on delegating the final decision along with certain pricing responsibilities for LEC-CMRS interconnection to the states. A review of the judicial precedents on this matter makes clear that such a decision would be contrary to law. Moreover, delegating CMRS interconnection issues to the states would be a serious misstep in the Commission's regulation of CMRS and its regulation of carrier interconnection relationships.

At issue in this matter is the fundamental question of the Commission's jurisdiction -- its jurisdiction over CMRS providers in general and LEC-CMRS interconnection specifically -- and its decision to abandon its regulatory responsibilities and delegate them to the various states. As you are well aware, in 1993 Congress amended both Section 332 and Section 2(b) of the Communications Act of 1934, as amended ("Act"), "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."[1] Through these amendments, Congress established CMRS as an area of uniquely federal concern, based, among other things, on the recognition that "mobile services . . ., by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[2] In light of these considerations, delegating ultimate decision making authority with respect to LEC-CMRS interconnection and bill and keep would amount to a dereliction of duty by the Commission.

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1 H.R. Conf. Rep. No. 103-213, at 490 (1993).

2 H.R. Rep. No. 103-111, at 259 (1993).

One certain fact has resulted from the extensive litigation surrounding the Commission's implementation of the interconnection provisions found in the Act:[3] the FCC has the sole authority to establish the terms of and to review LEC-CMRS interconnection agreements. In Iowa Utilities Board Bd. v. FCC, the court upheld the Commission's "rules of special concern to the CMRS providers" as they relate to LEC-CMRS interconnection.[4] Of special significance to the present discussion, the court recognized that the Commission has exclusive jurisdiction to regulate the rates for interconnection between CMRS providers and LECs. Importantly, that aspect of the court's decision was not reversed on appeal.

The court's interpretation of Section 332 recognized the Commission's broad authority to preempt state rate and entry regulation. First, the court established that Section 332's grant of authority to the Commission over CMRS rate and entry regulation should be interpreted to encompass rates established between telecommunications carriers. Second, the court made clear that Section 332 plays the paramount role in governing CMRS rate and entry regulation notwithstanding subsequent passage of the 1996 Telecommunications Act and preexisting jurisdictional limitations found in Section 2(b). Under Iowa Utilities Board, the Commission must act consistent with its determinations in the Interconnection Order.[5] It has exclusive jurisdiction to regulate LEC-CMRS interconnection. There is no role for state regulation of LEC-CMRS interconnection.

In Iowa Utilities Board, the court vacated several provisions of the Interconnection Order on the grounds that the Commission had exceeded its jurisdiction in establishing pricing arrangements for wireline interconnection. The court's finding was anchored by its understanding of Section 2(b).[6] In the 1993 amendments to the Communications Act, however,

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3 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, *First Report and Order*, 11 FCC Rcd 15499 (1996) ("Interconnection Order").

4 Iowa Utils. Bd. v. FCC, 120 F. 3d 753, 800 n.21 (8th Cir. 1997); vacated on other grounds sub. nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

5 See Interconnection Order at ¶ 1023 ("By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. We acknowledge that section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time.")

6 While its reasoning concerning the Commission's jurisdiction over wireline interconnection was ultimately reversed by the Supreme Court, the Eighth Circuit's holding with respect to LEC-CMRS interconnection was not, and it is therefore still positive law for the Commission.

Congress expressly created an exemption for Section 332 in Section 2(b).[7] The court, therefore, concluded that since the Section 2(b) reservation of authority to the states does not apply to CMRS interconnection, the Commission, not the states, has the ultimate authority to establish interconnection pricing rules between LECs and CMRS providers. Establishing a bill and keep regime would thus fall under that authority.

Significantly, the court's decision recognizes that Congress amended the Act to preempt state jurisdiction over entry and rates charged by CMRS providers.[8] Moreover, the court observed that Congress provided express Commission authority to regulate LEC-CMRS interconnection under Section 332(c)(1)(B).[9] Thus, the court concluded that federal regulation of CMRS rates and entry is a function of the Commission's plenary authority over communications by wire and communications by radio.

Although the Interconnection Order noted the jurisdictional foundation for LEC-CMRS interconnection afforded it by Sections 332 and 201, the Commission previously has shown some ambivalence about the extent of its jurisdiction over LEC-CMRS interconnection -- similar to ideas presently being considered.[10] Iowa Utilities Board indicates that a circumscribed view of the scope of the Commission's authority under Section 332 is unwarranted and impermissible. Indeed, the Commission recently declined to permit a state to regulate CMRS reseller switch interconnection, concluding that, inter alia, "in Iowa Utilities Board, the Eighth Circuit upheld the authority of the Commission to establish nationwide interconnection rules for wireless interconnection under Section 201 and 332(c)(1)(B) of the Act."[11]

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7 See 47 U.S.C. § 152(b).

8 See Iowa Utils. Bd. at n.21.

9 Id.

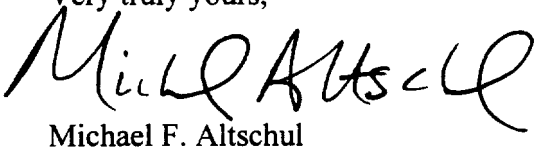
10 See Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana, PR Docket No. 94-107, *Report and Order*, 10 FCC Rcd 7898 at ¶ 47 (1995) (suggesting in dicta that a state's regulation of the interconnection rates charged by LECs to CMRS carriers "appears to involve rate regulation only of the landline companies, not the CMRS providers, and thus does not appear to be circumscribed in any way by Section 332(c)(3)."). In a bill and keep regime, the states' regulatory authority over LEC rates is not diminished.

11 Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Fourth Report and Order*, 15 FCC Rcd 13523, ¶ 25 (2000) (emphasis added); see TSR Wireless, LLC v. U S WEST Communications, File Nos. E-98-13, et al., *Memorandum Opinion and Order*, 15 FCC Rcd 11166, ¶ 3 (invoking its jurisdiction to regulate interconnection pricing between CMRS providers and LECs, and concluding that the Eighth Circuit rested with the Commission "authority to issue rules of special concern to CMRS providers.").

Through its determination that the Commission has exclusive jurisdiction to regulate the rates for CMRS transport and termination, the court in Iowa Utilities Board has clarified the meaning of "rates" in Section 332. Under the court's reasoning, the term "rates" is not limited to the prices that CMRS providers charge their retail subscribers. Rather, by upholding the Commission's requirements for LEC-CMRS transport and termination, the court concluded that Congress' prohibition on state regulation of CMRS rates also includes the rates CMRS providers pay for carrier-to-carrier interconnection. Thus, the Commission's apparent hesitation to define broadly the scope of its jurisdiction over the rates of CMRS interconnection for bill and keep has already been found unwarranted.

This accords with the Commission's proposed interpretation of its Section 332 authority over CMRS entry in CC Docket No. 95-185 where the Commission proposed regulating CMRS interconnection separate from wireline interconnection. In so doing, it considered whether Section 332 preempted state regulation of LEC-CMRS interconnection compensation to the extent that such regulation precludes (or effectively precludes) entry of CMRS providers.[12] The Commission's jurisdictional analysis in the Notice was correct and offers a foundation for the Commission's Section 332 jurisdictional findings on a going-forward basis. The subsequent Eighth Circuit decision provides a basis for the FCC to go even further. It shows that the Commission has direct jurisdiction over interconnection rates without regard to their effect on entry. In short, the court's decision compels a rearticulation of Section 332's broad jurisdictional scope -- it confirms what Congress had originally intended in 1993: that the Commission will be the sole arbiter of the terms for LEC-CMRS interconnection. The Commission, thus, should take this opportunity to replace LEC-CMRS reciprocal, symmetrical compensation requirements with bill and keep as expeditiously as possible and not attempt to delegate such responsibilities to the states.

Very truly yours,



Michael F. Altschul

cc: Commissioner Ness
Commissioner Powell
Commission Furchtgott-Roth
Commissioner Tristani
Dorothy Attwood
Thomas Sugrue
Kathryn Brown

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12 See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *Notice of Proposed Rulemaking*, 11 FCC Rcd 5020 at ¶ 111 (1996). It also contemplated the possibility that state regulatory preclusion of reasonable interconnection would interfere with the federal right to interconnection under Section 332.